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R.P. 19-07
ADM-9-03 OT:RR:RD:TCR
H303804 FS

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

USCBP – 2019 – 0032

RIN 1515 – AE47

CBP Dec. No. 19 – 10

Amendment to Statement Processing and Automated Clearinghouse (ACH)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations regarding statement processing and Automated Clearinghouse (ACH) to reflect that CBP will identify final statements as paid upon the completion of the funds transfer. Additionally, this document makes certain technical corrections to the CBP regulations on statement processing and ACH.

DATES: This interim final rule is effective September 7, 2019; comments must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by *docket number* USCBP-2019-0032, by *one* of the following methods:

- *Federal eRulemaking Portal* at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP-2019-0032.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **Public Participation** heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202-325-0118.

FOR FURTHER INFORMATION CONTACT: Kara Welty, Debt Management Branch, Revenue Division, Office of Finance, (866) 530-4172, *collectionscapabilityowners@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule. See **ADDRESSES** above for information on how to submit comments. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

II. Background on Statement Processing

Upon importation, the importer becomes liable to CBP for the amount of duties, taxes, and fees estimated to be payable on the merchandise. *See* 19 U.S.C. 1505(a) and sections 141.1(a), (b) and 141.3 of title 19 of the Code of Federal Regulations (19 CFR 141.1(a), 141.1(b), and 141.3). One way in which estimated duties, taxes, and fees can be deposited with CBP is by transmitting the estimated duties, taxes, and fees to CBP pursuant to statement processing, as described in 19 CFR 24.25. *See* 19 CFR 141.101.

Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries, by either importer or by filer, on a daily basis. *See* 19 CFR 24.1(a)(8) and 24.25(a). Any duties, taxes, and fees (as well as interest, if applicable) that are related to the grouped entry/entry summaries and entry summaries may be paid with a single payment, rather than by individual checks for each entry. *See* 19 CFR 24.25(a) and 143.32(p).

The ABI filer must elect whether payment for a particular entry summary will be by individual check or by statement processing upon the transmission of entry/entry summary and entry summary data to CBP through ABI. *See* 19 CFR 24.25(c)(1). The election of statement processing for a particular entry summary also requires the ABI filer to elect (1) whether the entry summary is to be grouped by the importer or broker, and (2) a valid scheduled statement date, which shall be within ten (10) days of entry, but not on a Saturday, Sunday, or holiday. *See* 19 CFR 24.25(c)(1) and (e).

On the scheduled statement date, CBP provides the ABI filer with a preliminary statement that is transmitted electronically to the filer using a CBP-authorized Electronic Data Interchange (EDI) system. 19 CFR 24.25(c)(2) and 143.32(p). The preliminary statement contains all entry/entry summaries and entry summaries scheduled for that statement date and the amount of duties, taxes, and fees due for payment. *See* 19 CFR 24.1(a)(8), 24.25(c)(2), and 143.32(p). The ABI filer is required to ensure that payment is made on each preliminary statement within ten (10) working days of the entry of the related merchandise. *See* 19 CFR 24.25(c)(2), (c)(3), and (e).

The preferred method of payment for ABI users of statement processing is by ACH, except where the importer has provided a separate check payable to “U.S. Customs and Border Protection” for customs charges (mixing of payment methods for a single statement is prohibited). *See* 19 CFR 24.1(a)(8) and 24.25(a). There are two (2) ACH payment processes—the ACH debit process and the ACH credit process, each of which is explained below with respect to its current state and how that will change under the amended regulations.

III. ACH Payment Processes

A. ACH Debit Process

The ACH debit process is an arrangement in which the filer electronically provides payment authorization for the Department of the Treasury (Treasury)-designated ACH processor bank to perform an electronic debit to the payor’s bank account. *See* 19 CFR 24.25(a). ABI filers using this process are required to provide CBP with the bank account and routing number for each account from which ACH payments are to be electronically debited. *See* 19 CFR 24.25(b)(2). The ABI filer initiates the payment process by transmitting one ACH debit authorization per preliminary statement to CBP through ABI. *See* 19 CFR 24.25(a) and (c). If the ACH debit authorization is error-free, then CBP will accept the ACH debit authorization and provide the ABI filer with a message confirming CBP’s acceptance of the ACH debit authorization. *See* 19 CFR 24.25(c)(4).

Currently, upon CBP's acceptance of the ACH debit authorization, CBP identifies the preliminary statement as paid and posts the appropriate amounts to the related entries. CBP then initiates the funds transfer by sending an electronic message to the Treasury-designated ACH processor bank instructing the Treasury-designated ACH processor bank to perform an electronic debit to the payor's bank account. *See* 19 CFR 24.25(a) and (c)(4). CBP generally makes the final statement available to the ABI filer the day following the acceptance of the ACH payment. *See* 19 CFR 24.25(c)(4). A final statement serves as evidence of the payment of a preliminary statement through an ACH transaction. *See* 19 CFR 24.25(c)(4).

Even though the preliminary statement is currently identified as paid upon acceptance of the ACH debit authorization, the funds transfer is usually not completed until two (2) business days after CBP's acceptance of the ACH debit authorization. To more accurately reflect the status of the funds transfer, CBP is amending its regulations to remove the requirement to identify the preliminary statement as paid. The preliminary statement will still be issued; but, instead, the amended regulations will require CBP to identify the final statement as paid and post the appropriate amounts to the related entries upon receiving confirmation from Treasury that the funds are available and transferred to CBP (which marks the completion of the funds transfer).

The amendments to the CBP regulations do not affect the timeliness of the payment, which remains based upon the date of CBP's acceptance of the ACH debit authorization. Once CBP receives confirmation from Treasury that the funds are available and transferred to CBP, then CBP will treat the date of CBP's acceptance of

the ACH debit authorization as the effective payment date for purposes of determining the timeliness of the payment. The date of CBP's acceptance of the ACH debit authorization also remains the date for the calculation of interest and/or liquidated damages, if applicable; the calculation is unaffected by this amendment to the CBP regulations pertaining to ACH debit payments.

B. ACH Credit Process

Pursuant to 19 CFR 24.26(a), ACH credit is an optional payment method that allows a payor to electronically transmit statement processing payments under 19 CFR 24.25, deferred tax payments under 19 CFR 24.4, or bill payments under 19 CFR 24.3, through its financial institution, directly to the CBP account maintained by Treasury. Currently, when an importer uses the ACH credit process, CBP will, upon the acceptance of the credit payment, identify the preliminary statement as paid and post the appropriate amounts to the related entries. *See* 19 CFR 24.25(c)(4).

In order to promote consistency with the amendments to the ACH debit process, CBP is also amending 19 CFR 24.25(c)(4) to reflect that CBP will identify final statements, as opposed to preliminary statements, as paid for the ACH credit process. As explained above for the ACH debit process, these changes do not affect either the timeliness of the payment or the date for the calculation of interest and/or liquidated damages, if applicable, for the ACH credit process.

C. Implementation of Changes

In order to provide for the changes to the ACH payment processes discussed above, and to provide clarity regarding which aspects of the payment processes are not affected, this document amends § 24.25(c)(4) by revising this provision and by splitting this provision into three (3) subparagraphs—paragraphs (c)(4)(i) through (iii).

Paragraph (c)(4)(i) of § 24.25 reflects that, for purposes of determining the timeliness of the statement payment (as well as the calculation of any interest and/or liquidated damages, if applicable), CBP will continue to use the date of acceptance of the ACH debit payment authorization or ACH credit payment as the payment date once CBP receives confirmation from Treasury that the funds are available and transferred to CBP.

Paragraph (c)(4)(ii) of § 24.25 reflects the changes to CBP's internal accounting procedures; particularly, that CBP will, upon receiving confirmation from Treasury that the funds are available and transferred to CBP, identify the final statement as paid and post the appropriate amounts to the related entries.

Paragraph (c)(4)(iii) of § 24.25 reflects that CBP will continue to generally make available to the filer the final statement on the day following the receipt of the ACH payment by CBP. This paragraph also clarifies that CBP continues to accept final statements (for ACH transactions) and cancelled checks as evidence that can be used to prove that statement payment has occurred.

IV. Nomenclature Updates

This document also proposes to update the nomenclature in § 24.25, due to the renaming of the U.S. Customs Service to U.S. Customs and Border Protection.

Specifically, this document is amending paragraph (a) of § 24.25, by replacing the reference to “U.S. Customs Service” with “U.S. Customs and Border Protection”, as well as making a grammatical change to the phrase “Customs charges” to be in the lower case. Second, due to the renaming of the U.S. Customs Service to U.S. Customs and Border Protection, this document proposes to replace references to “Customs” with “CBP” in § 24.25.

V. Statutory and Regulatory Requirements

A. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. CBP finds that prior notice and comment are unnecessary and that good cause exists to issue this rule effective upon publication.

Prior notice and comment are unnecessary because the rule does not substantively alter the underlying rights or interests of importers or filers. Instead, the rule is essentially technical by merely modifying the regulations to reflect the marking of a statement as paid to coincide with the completion of the funds transfer for the ACH debit and credit payment processes. CBP will continue to treat the date of CBP's acceptance of the ACH debit authorization and the ACH credit payment as the effective payment date for purposes of determining the timeliness of the statement payment (as well as for the calculation of any interest and/or liquidated damages, if applicable) once CBP receives confirmation from Treasury that the funds are available and transferred to CBP. Accordingly, the trade community will experience no delays, interruptions or process changes associated with this change to the regulations. This change only affects CBP's internal accounting procedures and does not alter the substantive rights of the members of the trade community.

B. Executive Orders 13563, 12866 and 13771

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the

cost of planned regulations be prudently managed and controlled through a budgeting process.”

This interim final rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

D. Paperwork Reduction Act

This interim final rule does not impose an additional information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and does not involve any material change to the existing approved information collection by the Office of Management and Budget (OMB) under assigned OMB control number 1651-0078.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

E. Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to the Regulations

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

PART 24 – CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

2. In § 24.25:

a. Paragraph (a), third sentence, is amended by:

1. Removing the phrase “ “U.S. Customs Service” ” and adding the phrase “ “U.S. Customs and Border Protection” ” in its place;
2. Removing the phrase “Customs charges” and adding the phrase “customs charges” in its place; and
3. Removing the word “Customs” before the phrase “(see § 111.29(b) of this chapter)” and adding the word “CBP” in its place.

b. Paragraph (a), seventh sentence is amended by removing the word “Customs” and adding the word “CBP” in its place;

c. Paragraph (b) is amended by removing the word “Customs” in each place that it appears and adding in each place the word “CBP”;

d. Paragraph (c)(2) is amended by removing the word “Customs” in each place that it appears and adding in each place the word “CBP”;

e. Paragraph (c)(4) is revised;

f. Paragraph (d) is amended by removing the word “Customs” in each place that it appears and adding in each place the word “CBP”; and

g. Paragraph (e) is amended in the last sentence by removing the word “Customs” and adding in its place the word “CBP”.

The revision reads as follows:

§ 24.25 Statement processing and Automated Clearinghouse.

* * * * *

(c) * * *

(4) Payments made through ACH are processed as follows:

(i) *Payment date; interest and liquidated damages.* The date of acceptance of the ACH debit payment authorization or ACH credit payment for the preliminary statement is the payment date when determining compliance with the due date for scheduled statements and for purposes of § 24.3a of this part, and subject to the provisions of § 113.62(a)(1)(i) and (m)(4) of this chapter.

(ii) *Issuance of final statement.* CBP shall, upon confirmation from the Department of the Treasury that funds are available and transferred to CBP, identify the final statement as paid and post the appropriate amounts to the related entries.

(iii) *Evidence of payment.* The final statement generally shall be available to the filer the day following the receipt of the ACH payment by CBP. The final statement may be utilized as evidence that statement payment has occurred through an ACH transaction. In other instances, a cancelled check may serve as evidence of payment.

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Robert E. Perez
Deputy Commissioner,
U.S. Customs and Border Protection

Approved: August 29, 2019.

Timothy E. Skud
Deputy Assistant Secretary,
Department of the Treasury
[FR Doc. 2019-19149 Filed: 9/4/2019 8:45 am; Publication Date: 9/5/2019]